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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,711	10/18/2005	Noel O'Neill	9052-218	8453
20792	7590	08/11/2006	EXAMINER	
MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627			RALIS, STEPHEN J	
			ART UNIT	PAPER NUMBER
			3742	

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/528,711	<b>Applicant(s)</b> O'NEILL, NOEL	
	<b>Examiner</b> Stephen J. Ralis	<b>Art Unit</b> 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/05/2006</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

1. Applicant's claim for foreign priority benefit of Great Britain Patent Application No. 0221728.9 and 0313057.2, filed 28 May 2004, are acknowledged and granted.

### ***Information Disclosure Statement***

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Drawings***

3. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because drawings are hand drawn. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

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4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “baffle 16a” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

5. The disclosure is objected to because of the following informalities: page 4, line 22, “a flexible drive-transmitting bush” should read –a flexible drive-transmitting

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bushing-. The disclosure is replete with this error and all references should be addressed. accordingly.

Appropriate correction is required.

### ***Claim Objections***

6. Claim 11 is objected to because of the following informalities: In lines 2 and 4, "flexible bush" should read -flexible bushing-; in line 3, "releaseably" should read -releasably-. Appropriate correction is required. The claim is examined as such.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 2, 4, 5, 8 and 12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Neill (United Kingdom Publication No. 2298073A).

O'Neill'073 discloses a flame effect electric fire comprising: a housing (outer casing 1) adapted to be mounted on a substantially plane wall; heating means disposed in the housing operative to draw air into the housing, heat the air and expel the heated air (fan heater 2); and a flame simulating assembly mounted in the housing (simulated fuel 3); and comprising: a light source (light source 7); a viewing screen capable of diffusing and transmitting light (screen 4; page, 7 lines 18-35); a rear reflecting means

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disposed behind the viewing screen (reflecting panel 6; page 9, line 33 – page 10, line 19); and means for producing moving beams of light (rotor 8 which is mounted foil strips 9; page 7, lines 10-16; page 8, lines 18-25; page 10, lines 21-32), the light source being disposed below the reflecting means and behind the viewing screen (see Figure 3), the means for producing moving beams of light (indirectly –see Figure 3) is disposed in front of the light source and below the screen and light from the light source is reflected by the means for producing moving beams of light onto the reflecting means and is reflected by the reflecting means onto the screen to produce a perceptible image viewable on the screen (see Figure 3), and wherein the heating means draws in and expels air through a downwardly facing external panel of the housing (see Figure 3).

O'Neill'073 further discloses the light from the light source being prevented from falling directly onto the viewing screen by means of a baffle (shield 10) mounted above the light source (page 9, lines 17-22; see Figure 3); an additional reflector being disposed behind the light source (auxiliary reflector 13; page 9, lines 8-12; see Figure 3); the rear reflecting means comprising a sheet of material having reflecting regions and non-reflecting regions, the regions being generally flame shaped and the rear reflecting means having a concave reflecting surface (page 10, lines 14-19); the simulated fuel bed being disposed directly in front of the diffusing and transmitting screen (see Figure 3); and the screen comprising a reflective front surface configured such that a reflection of the fuel bed can be seen in the screen (page 7, lines 18-22).

With respect to the limitation of “adapted to be mounted on a substantially plane wall”, the proposition of “adapted to” is being deemed functional language and if a

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reference has the structure and the controllability to perform the operation, the reference is complete as detail, please refer to MPEP §2111.04, ("Claim scope is not limited by claim language that does not limit a claim to a particular structure"; i.e. usage of "adapted to"; "configured to" being an equivalent is definition). Therefore, it is deemed that the structure of O'Neill (outer casing 1 and all of its structure) has the structure and controllability to perform the operation of being mounted on a substantially plane wall.

As the reference meets all material limitations of the claims at hand, the reference is anticipatory.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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11. Claims 3, 6 and 7 rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill (United Kingdom Publication No. 2298073A) in view of O'Neill (United Kingdom Publication No. 2372807A) and Fukue (Japanese Patent No. JP 06290762).

The claims differ from O'Neill'073 in calling for the light source comprising at least one halogen bulb or tungsten filament bulb having a maximum external dimension of not more than about 40mm; and the light source having a width of not more than 35mm and 15mm.

However, an apparatus for simulating a flame effect utilizing a halogen bulb, as described by O'Neill'807, is well known in the art. O'Neill teaches a simulating flame assembly comprising a halogen lamp(14) to provide a low voltage light source (5 watts; page 2, lines 24-26), allowing the flame simulating device to operate at relatively low voltages (page 2, lines 6-8), thereby providing a more electrically safe flame simulating device (page 1, lines 27). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the light source of O'Neill'073 with the halogen light source of O'Neill'807 to provide a low voltage light source, allowing the flame simulating device to operate at relatively low voltages, thereby providing a more electrically safe flame simulating device.

In addition, Halogen bulbs having a maximum external dimension of not more than 40mm and having a width of not more than 15mm and 35 mm, as described by Fukue, is well known in the art. Fukue teaches a halogen bulb having a maximum external dimension of not more than 40mm (maximum dimension is the diameter being in the range of 12mm to 18mm and the width being 6mm to 10mm; English Constitution



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translation) to provide an effective region of an infrared reflecting while still satisfying the operational requirements, thereby providing a more desired halogen light source. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the halogen light source of O'Neill'073 with dimension limitations of Fukue to provide an effective region of an infrared reflecting while still satisfying the operational requirements, thereby providing a more desired halogen light source.

12. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill (United Kingdom Publication No. 2298073A) in view of Cornell (U.S. Patent No. 2,984,032).

The claims differ from O'Neill'073 in calling for the shaft being driveably connected at a first end thereof to a drive means for rotation of the shaft and being retained at a second end thereof in a supporting bracket, the shaft being displaceable from an operative position thereby to permit access to the light source; and the shaft being connected to the drive means via a flexible bushing and the second end of the shaft is releasably mounted in the bracket, the shaft being displaceable when desired by flexure of the flexible bushing. However, a simulated flame apparatus having a motor connected to the shaft via a flexible bushing on one end and having a the shaft releasably connected to a support bracket on the other end, as described by Cornell, is well known in the art. Cornell teaches an artificial fireplace apparatus comprising a motor (34) mounted to a shaft (38), which extends inwardly through support leg (26). Cornell further teaches the shaft (38) is coupled to shaft (32) via a resilient sleeve (40)

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made of rubber or the like to provide a simple assembly and making it possible to make any necessary repairs or replacements (column 2, lines 33-43), thereby allowing the shaft to be disconnected without the use of any tools and easing maintenance thereof. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the motor/shaft coupling of the O'Neill apparatus with the flexible coupling mechanism of Cornell to provide a simple assembly and making it possible to make any necessary repairs or replacements, thereby allowing the shaft to be disconnected without the use of any tools and easing maintenance thereof.

***Prior Art***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 3,526,984 to Nielsen et al. is a teaching of a flame simulating device with a motor a flexible bushing connection.

U.S. Patent No. 4,965,707 to Butterfield is a teaching of a flame simulating device with a rotating flame fire simulator.

U.S. Patent No. 6,363,636 to Hess et al. a teaching of a flame simulating device with a rotating flame fire simulator, light source, reflective panel and the instant invention.

U.S. Patent No. 6,564,485 is cumulative to or less pertinent than the references relied upon above.

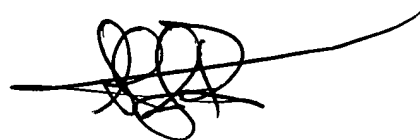
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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Ralis whose telephone number is 571-272-6227. The examiner can normally be reached on Monday - Friday, 8:00-5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Stephen J Ralis  
Examiner  
Art Unit 3742

SJR  
August 6, 2006



ROBIN O. EVANS  
PRIMARY EXAMINER  
8/7/06